

**Before the  
FEDERAL COMMUNICATION COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review by Academia	)	
Santa Teresita de Naranjito, Inc. of	)	Form 471 Application No. 290615
Decision of the Universal Service	)	
Administrator	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	

TO: Wireline Competition Bureau  
Telecommunications Access Policy Division

**REQUEST FOR REVIEW**

Pursuant to Sections 54.719(c) and 54.721 of the Federal Communications Commission (“Commission” or “FCC”) rules, 47 C.F.R. §§ 54.719(c) and 54.721 (2003), Academia Santa Teresita de Naranjito, Inc. (“Santa Teresita”) hereby appeals the decision of the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company to reduce the requested discount in Funding Year 2002 (07/01/2002 – 06/30/2003) from 90 to 20 percent.

**I. Background**

On January 4, 2002, Santa Teresita filed a FCC Form 471 with the SLD for Funding Year 2002 indicating the services for which it was requesting discounts under the E-rate program.<sup>1</sup> Block 1 of Santa Teresita’s 471 application lists Gilberto Perez as the contact person for this application. On January 15, 2002, upon receipt and successful data entry of the 471, the SLD issued a Receipt Acknowledgement Letter summarizing Santa Teresita’s funding requests. On March 1, 2004, over two years after Santa Teresita submitted its 471, the SLD issued a funding commitment decision letter reducing the discount rate for Internet Access and Internal

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<sup>1</sup> FCC Form 471 No. 290615, Academia Santa Teresita de Naranjito, Inc., filed January 4, 2002 (Exhibit A).

Connections from 90 to 20 percent and denying funding for Internal Connections. The SLD alleged that Santa Teresita did not provide sufficient information to validate a 90 percent discount.

On April 30, 2004, Santa Teresita appealed the SLD's decision to lower the discount to 20 percent as well as its decision not to fund Internal Connections.<sup>2</sup> In its appeal, Santa Teresita argued that the SLD erred in its decision to lower the discount because the SLD failed to contact the school to request the appropriate documentation to validate the discount requested and, had the SLD contacted the school, it would have received documentation supporting a 60 percent discount. On October 13, 2004, the SLD denied the appeal alleging that the school did not respond to an SLD request for information regarding the requested discount percentage.<sup>3</sup>

Specifically, the SLD stated:

On April 30, 2002, SLD contacted M. Melgen by facsimile and requested documentation to support your requested discount percentage. Since there was no response to this request, SLD modified your discount eligibility percentage to the base rate allowed. You did not demonstrate in your appeal that the adjustment the SLD made to your discount eligibility percentage was incorrect. Consequently, SLD denies your appeal.<sup>4</sup>

## **II. The SLD Erred In Failing To Follow FCC Precedent That Requires The SLD To Contact Santa Teresita To Request Documentation To Support The Requested Discount Percentage.**

The SLD states in its letter of denial that, "*SLD contacted M. Melgen by facsimile and requested documentation to support your requested discount percentage.*" However, Santa

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<sup>2</sup> Letter of Appeal from Josefina Lopez, Director, Academia Santa Teresita de Naranjito, Inc., to Schools and Libraries Division, Universal Service Administrative Company, dated April 30, 2004 (Santa Teresita Appeal) (Exhibit B).

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Josefina Lopez, Academia Santa Teresita de Naranjito, Inc., dated October 13, 2004 (SLD Administrative Decision on Appeal) (Exhibit C).

<sup>4</sup> *SLD Administrative Decision on Appeal* at p. 2.

Teresita clearly stated in both its 470<sup>5</sup> and 471 forms that the contact person for the school was Gilberto Perez, not M. Melgen.<sup>6</sup> Therefore, as the contact person for Santa Teresita, Gilberto Perez was the only person responsible for communicating with the SLD and responding to any and all requests for information regarding this application. However, during the application review process, the SLD, by its own admission, failed to contact Mr. Perez regarding validation of the requested discount and has given no explanation as to why it contacted Ms. Melgen instead.

The Wireline Competition Bureau (“Bureau”) precedent relevant to this case states that the SLD must provide applicants with an opportunity to provide documentation to support statements in their applications. This precedent was not followed in this case. In *Beginning with Children Charter School; Yeshiva Karlin-Stolin*, 18 FCC Rcd 936 (2003) (*BWC/Yeshiva*), the Bureau ruled that the SLD erred when it failed to afford two applicants an opportunity to provide additional documentation to support their ability to pay their share of the costs of the E-rate services.<sup>7</sup> In that case, the Bureau determined that the applicants’ budgets failed to demonstrate that they had the ability to pay the full amount of their share of the costs. However, the Bureau noted:

Under its normal operating procedures . . . when the SLD identifies such problems with the budget or other initial documentation proffered by an applicant to demonstrate ability to pay, *it generally*

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<sup>5</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, Block 1, Item 6a, posted on the SLD website on November 12, 2001 (Exhibit D).

<sup>6</sup> The instructions for Form 471 indicate that an applicant should provide in Block 1, Item 6a, “*the name of the person who should be contacted with questions about this applications. This person should be able to answer questions regarding the information included on this form and the services you request.*” See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806.

<sup>7</sup> *Beginning with Children Charter School, Brooklyn, New York; Yeshiva Karlin-Stolin, Brooklyn, New York*, Order, 18 FCC Rcd 936 (rel. Jan 30, 2003) (*BWC/Yeshiva*).

*contacts the applicant and provides an opportunity to remedy the difficulty. For example, in instances where the budget or other documentation initially submitted does not demonstrate that sufficient funds have been secured to pay for all the services, an applicant is given an opportunity to submit further documentation on this issue. Alternatively, if the budget demonstrates sufficient funds but also reveals an overall budget deficit, an applicant is permitted to demonstrate how additional revenues will be obtained to cover the deficit or to stipulate to other expenses that will be eliminated. Finally, if an applicant can demonstrate that it had a good faith, reasonable basis at the time the application was filed for stating that it had secured the necessary funds but that events subsequent to the filing, such as unanticipated budget cuts, have not rendered it unable to pay for all of its FRNs, SLD provides the applicant with the opportunity to select a subset of its FRNs that its current funds can cover.*<sup>8</sup> (Emphasis added)

Based on this precedent, the SLD should have provided Santa Teresita with an opportunity to submit documentation regarding its eligibility for the requested discount percentage. The SLD failed to do that by failing to contact Mr. Perez.

### **III. The SLD Erred In Its Assertion That Santa Teresita Did Not Demonstrate In Its Appeal That The Adjustment Made To Its Discount Eligibility Percentage Was Incorrect.**

Under the Commission's rules, the discount available to a particular school is determined by indicators of poverty and high relative cost of service.<sup>9</sup> The level of poverty for schools is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the NSLP or a federally-approved alternative mechanism.<sup>10</sup> A school's high-cost status is derived from rules that classify it as urban or rural.<sup>11</sup> The Commission's rules provide a

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<sup>8</sup> *BWC/Yeshiva*, 18 FCC Rcd 936 ¶ 9.

<sup>9</sup> 47 C.F.R. § 54.505(b).

<sup>10</sup> 47 C.F.R. § 54.505(b)(1).

<sup>11</sup> 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.<sup>12</sup>

In its appeal, Santa Teresita provided the SLD with information regarding its eligibility for a 60 percent discount. Specifically, the school provided a Certificate of Authorization to Operate Lunch School Program issued by the Puerto Rico Department of Education ("PRDOE") certifying that the school had a total enrollment of 449 students during the 2002-2003 academic year (including pre-Kinder students), of which 221 participated in the lunch program.<sup>13</sup> Because PRDOE's certification includes 21 pre-K students, Santa Teresita subtracted those 21 students from the total number of students enrolled and from the number of students participating in the lunch program, which results in 428 enrolled students and 200 students participating in the lunch program.<sup>14</sup> The number of participating students (200) divided by the number of enrolled students (428) represents 46.7 percent of the student population. Under the FCC rules, a school with 46.7 percent of its student population eligible for the lunch program qualifies for a 60 percent discount.

#### **IV. CONCLUSION**

Santa Teresita has shown that the SLD erred in its decision to reduce the school's discount rate to 20 percent because the SLD, by its own admission, failed to contact the person listed on the applicant's Form 470 and Form 471 and, thereby, failed to follow FCC precedent in this area by failing to provide the applicant with an opportunity to provide documentation

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<sup>12</sup> 47 C.F.R. § 54.505(c).

<sup>13</sup> *Santa Teresita Appeal*, Annex 1 (titled "*Autorizacion Para Operar El Comedor Escolar*").

<sup>14</sup> Because of a clerical error, Santa Teresita stated in its Appeal that there were 197 rather than 200 students participating in the lunch program. This clerical error does not have an impact on Santa Teresita's eligibility for a 60 percent discount.

addressing a problem that the SLD perceived with its application. FCC precedent holds that the SLD must provide applicants with an opportunity to provide documentation to address problems with their applications. Santa Teresita has also shown how the SLD erred in its assertion that applicant did not demonstrate in its appeal that the adjustment made to its Discount Eligibility Percentage was incorrect. For these reasons, Santa Teresita respectfully requests that the Commission reverse the SLD's decision and remand its application to the SLD for further processing.

Respectfully submitted,

**ACADEMIA SANTA TERESITA  
DE NARANJITO, INC.**

/s/ Josefina Lopez  
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December 13, 2004

ATTACHMENTS

Exhibit A - FCC Form 471 No. 290615  
Exhibit B - Letter of Appeal dated April 30, 2004  
Exhibit C - SLD Administrative Decision on Appeal dated October 13, 2004  
Exhibit D - FCC Form 470 No. 761820000375798

## CERTIFICATE OF SERVICE

I, Josefina Lopez, hereby certify that a true and correct copy of the foregoing **“Request for Review”** was served, this day, December 13, 2004, via the Commission’s Electronic Comment Filing Service upon Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

s/ Josefina Lopez  
Josefina Lopez  
Academia Santa Teresita de Naranjito, Inc.